

AMENDED IN ASSEMBLY JULY 9, 2009

AMENDED IN ASSEMBLY JUNE 22, 2009

AMENDED IN SENATE JUNE 2, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 458

Introduced by Senator Wolk

(Principal coauthor: Assembly Member Yamada)

(Coauthors: Senators DeSaulnier and Wiggins)

(Coauthor: Assembly Member Torlakson)

February 26, 2009

~~An act to add Division 22.3 (commencing with Section 32300) to the Public Resources Code, relating to conservancies. An act relating to the Sacramento-San Joaquin Delta.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 458, as amended, Wolk. ~~Conservancies: Sacramento-San Joaquin Delta Conservancy.~~ *Conservancy: Delta Protection Commission.*

Existing law authorizes various conservancies to acquire, manage, direct the management of, and conserve public lands in the state. *The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 creates the 23-member Delta Protection Commission and requires the commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta.*

This bill would state the intent of the Legislature to enact legislation to establish a Sacramento-San Joaquin Delta Conservancy and to modify the Delta Protection Commission.

~~This bill would establish the Sacramento-San Joaquin Delta Conservancy to undertake various activities related to the Delta, as defined, and Suisun Marsh, as defined, including supporting efforts that advance both environmental protection and the economic well-being of Delta residents, and undertaking efforts to enhance public use and enjoyment of lands owned by the public. The bill would prescribe the management, powers, and duties of the conservancy. The bill would create the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, for the purposes of the conservancy.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to enact~~
2 ~~legislation to establish a Sacramento-San Joaquin Delta~~
3 ~~Conservancy and to modify the Delta Protection Commission.~~

4 ~~SECTION 1. Division 22.3 (commencing with Section 32300)~~
5 ~~is added to the Public Resources Code, to read:~~

6
7 ~~DIVISION 22.3. SACRAMENTO-SAN JOAQUIN DELTA~~
8 ~~CONSERVANCY~~

9
10 ~~CHAPTER 1. GENERAL PROVISIONS~~

11
12 ~~32300. This division shall be known, and may be cited, as the~~
13 ~~Sacramento-San Joaquin Delta Conservancy Act.~~

14 ~~32301. The Legislature finds and declares all of the following:~~

15 ~~(a) The Sacramento-San Joaquin Delta is a unique natural~~
16 ~~resource of local, state, and national significance.~~

17 ~~(b) At 1,300 square miles, the Delta is the largest estuary on the~~
18 ~~west coast of North and South America.~~

19 ~~(c) Its rivers and labyrinths of sloughs and channels are home~~
20 ~~to 750 species of plants and wildlife as well as 55 species of fish,~~
21 ~~provide habitat for 700 native plant and animal species, and are~~
22 ~~part of the Pacific Flyway, one of the largest estuaries in the world.~~

23 ~~(d) The Delta contains more than 500,000 acres of agriculture,~~
24 ~~with unique soils and farmers who are creative and utilize~~
25 ~~innovative agriculture, such as carbon sequestration crops,~~

1 subsidence reversal crops, wildlife-friendly crops, and crops direct
2 for marketing to the large urban populations nearby.

3 (e) The Delta and Suisun Marsh provide numerous opportunities
4 for recreation, such as boating, kayaking, fishing, hiking, birding,
5 and hunting. Navigable waterways in the Delta are available for
6 public access and currently make up the majority of recreational
7 opportunities. There is a need for land-based recreational access
8 points including parks, picnic areas, and campgrounds.

9 (f) The Delta's history is rich with a distinct natural, agricultural,
10 and cultural heritage. It is home to the community of Locke, the
11 only town in the United States built primarily by early Chinese
12 immigrants. Other legacy communities include Isleton, Rio Vista,
13 Walnut Grove, Courtland, Clarksburg, Freeport, Knightsen, Hood,
14 Locke, Ryde, and Bethel Island.

15 (g) The Delta is home to more than 500,000 people and 200,000
16 jobs, and contributes over thirty-five billion dollar
17 (\$35,000,000,000) to the state's economy.

18 (h) In addition, the Delta provides water to more than 25 million
19 Californians and three million acres of agriculture. It supports a
20 four hundred billion dollars (\$400,000,000,000) economy and is
21 traversed by energy, communications, and transportation facilities
22 vital to the economic health of California.

23 (i) A Sacramento-San Joaquin Delta Conservancy can support
24 efforts that advance both environmental protection and the
25 economic well-being of Delta residents in a complementary
26 manner, including all of the following:

27 (1) Protect and enhance habitat and habitat restoration.

28 (2) Protect and preserve Delta agriculture and working
29 landscapes.

30 (3) Undertake efforts to enhance public use and enjoyment of
31 lands owned by the public, including linkages to areas outside the
32 Delta.

33 (4) Provide increased opportunities for tourism and recreation.

34 (5) Promote Delta legacy communities and economic vitality
35 in the Delta in coordination with the Delta Protection Commission.

36 (6) Increase the Delta's resilience to the effects of natural
37 disasters such as floods and earthquakes, in coordination with the
38 Delta Protection Commission.

39 (7) Protect and improve water quality.

1 ~~(8) Assist the Delta regional economy through the operation of~~
2 ~~the conservancy's program.~~

3 ~~(9) Identify priority projects and initiatives for which funding~~
4 ~~is needed.~~

5 ~~(10) Protect, conserve, and restore the region's physical,~~
6 ~~agricultural, cultural, historical, and living resources.~~

7 ~~(11) Assist local entities in the implementation of their Habitat~~
8 ~~Conservation Plans (HCPs) and Natural Community Conservation~~
9 ~~Plans (NCCPs).~~

10 ~~(12) Facilitate take protection and safe harbor agreements under~~
11 ~~the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531~~
12 ~~et seq.) and the California Endangered Species Act (Chapter 1.5~~
13 ~~(commencing with Section 2050) of Division 3 of the Fish and~~
14 ~~Game Code) for adjacent landowners and local public agencies.~~

15 ~~(13) Promote environmental education.~~

16 ~~(j) The voluntary acquisition of wildlife and agricultural~~
17 ~~conservation easements in the Delta promotes and enhances the~~
18 ~~traditional Delta values of agriculture, habitat, and recreation.~~

19
20 ~~CHAPTER 2. DEFINITIONS~~

21
22 ~~32310. For the purposes of this division, the following terms~~
23 ~~have the following meanings:~~

24 ~~(a) "Board" means the governing board of the Sacramento-San~~
25 ~~Joaquin Delta Conservancy.~~

26 ~~(b) "Conservancy" means the Sacramento-San Joaquin Delta~~
27 ~~Conservancy.~~

28 ~~(c) "Delta" means the Sacramento-San Joaquin Delta as defined~~
29 ~~in Section 12220 of the Water Code.~~

30 ~~(d) "Fund" means the Sacramento-San Joaquin Delta~~
31 ~~Conservancy Fund created pursuant to Section 32360.~~

32 ~~(e) "Local public agency" means a city, county, district, or joint~~
33 ~~powers authority.~~

34 ~~(f) "Nonprofit organization" means a private, nonprofit~~
35 ~~organization that qualifies for exempt status under Section~~
36 ~~501(c)(3) of Title 26 of the United States Code and that has among~~
37 ~~its principal charitable purposes preservation of land for scientific,~~
38 ~~recreational, scenic, or open-space opportunities, protection of the~~
39 ~~natural environment, preservation or enhancement of wildlife,~~

1 preservation of cultural and historical resources, or efforts to
2 provide for the enjoyment of public lands.

3 (g) “Suisun Marsh” means the area defined in Section 29101
4 and protected by Division 19 (commencing with Section 29000).

5 (h) “Tribal organization” means an Indian tribe, band, nation,
6 or other organized group or community, or a tribal agency
7 authorized by a tribe, which is recognized as eligible for special
8 programs and services provided by the United States to Indians
9 because of their status as Indians and is identified on pages 52829
10 to 52835, inclusive, of Number 250 of Volume 53 (December
11 29, 1988) of the Federal Register, as that list may be updated or
12 amended from time to time.

13
14 ~~CHAPTER 3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY~~

15
16 32320. ~~There is in the Natural Resources Agency the~~
17 ~~Sacramento-San Joaquin Delta Conservancy, which is created as~~
18 ~~a state agency to work in collaboration and cooperation with local~~
19 ~~governments and interested parties.~~

20 32322. (a) ~~The conservancy shall support efforts that advance~~
21 ~~both environmental protection and the economic well-being of~~
22 ~~Delta residents in a complementary manner, including all of the~~
23 ~~following:~~

24 (1) ~~Protect and enhance habitat and habitat restoration.~~

25 (2) ~~Protect and preserve Delta agriculture and working~~
26 ~~landscapes.~~

27 (3) ~~Provide increased opportunities for tourism and recreation~~
28 ~~in the Delta.~~

29 (4) ~~Promote Delta legacy communities and economic vitality~~
30 ~~in the Delta, in coordination with the Delta Protection Commission.~~

31 (5) ~~Increase the Delta’s resilience to the effects of natural~~
32 ~~disasters such as floods and earthquakes, in coordination with the~~
33 ~~Delta Protection Commission.~~

34 (6) ~~Protect and improve water quality.~~

35 (7) ~~Assist the Delta regional economy through the operation of~~
36 ~~the conservancy’s program.~~

37 (8) ~~Identify priority projects and initiatives for which funding~~
38 ~~is needed.~~

39 (9) ~~Protect, conserve, and restore the region’s physical,~~
40 ~~agricultural, cultural, historical, and living resources.~~

1 ~~(10) Assist local entities in the implementation of their Habitat~~
2 ~~Conservation Plans (HCPs) and Natural Community Conservation~~
3 ~~Plans (NCCPs).~~

4 ~~(11) Facilitate take protection and safe harbor agreements under~~
5 ~~the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531~~
6 ~~et seq.) and the California Endangered Species Act (Chapter 1.5~~
7 ~~(commencing with Section 2050) of Division 3 of the Fish and~~
8 ~~Game Code) for adjacent landowners and local public agencies.~~

9 ~~(12) Promote environmental education through grant funding.~~

10 ~~(b) When implementing subdivision (a), the conservancy shall~~
11 ~~undertake efforts to enhance public use and enjoyment of lands~~
12 ~~owned by the public.~~

13
14 ~~CHAPTER 4. GOVERNING BOARD~~
15

16 ~~32330. The board shall consist of 11 voting members and five~~
17 ~~nonvoting members, appointed or designated as follows:~~

18 ~~(a) The 11 voting members of the board shall consist of all of~~
19 ~~the following:~~

20 ~~(1) The Secretary of the Natural Resources Agency, or his or~~
21 ~~her designee.~~

22 ~~(2) The Director of Finance, or his or her designee.~~

23 ~~(3) The chairperson of the Delta Protection Commission, or his~~
24 ~~or her designee.~~

25 ~~(4) One member of the board or a designee who is appointed~~
26 ~~by the Contra Costa County Board of Supervisors, who is a resident~~
27 ~~of the county.~~

28 ~~(5) One member of the board or a designee who is appointed~~
29 ~~by the Sacramento County Board of Supervisors, who is a resident~~
30 ~~of the county.~~

31 ~~(6) One member of the board or a designee who is appointed~~
32 ~~by the San Joaquin County Board of Supervisors, who is a resident~~
33 ~~of the county.~~

34 ~~(7) One member of the board or a designee who is appointed~~
35 ~~by the Solano County Board of Supervisors, who is a resident of~~
36 ~~the county.~~

37 ~~(8) One member of the board or a designee who is appointed~~
38 ~~by the Yolo County Board of Supervisors, who is a resident of the~~
39 ~~county.~~

40 ~~(9) One public member appointed by the Governor.~~

1 ~~(10) One public member appointed by the Senate Committee~~
2 ~~on Rules.~~

3 ~~(11) One public member appointed by the Speaker of the~~
4 ~~Assembly.~~

5 ~~(b) The five nonvoting members shall consist of all of the~~
6 ~~following:~~

7 ~~(1) A designee of the San Francisco Bay Conservation and~~
8 ~~Development Commission for coordination purposes.~~

9 ~~(2) A designee of the State Coastal Conservancy for coordination~~
10 ~~purposes.~~

11 ~~(3) A designee of the Suisun Resource Conservation District~~
12 ~~for coordination purposes.~~

13 ~~(4) A Member of the Senate, appointed by the Senate Committee~~
14 ~~on Rules, and a Member of the Assembly, appointed by the Speaker~~
15 ~~of the Assembly, shall meet with the conservancy and participate~~
16 ~~in its activities to the extent that this participation is not~~
17 ~~incompatible with their positions as Members of the Legislature.~~
18 ~~The appointed Members shall represent a district that encompasses~~
19 ~~a portion of the Delta.~~

20 ~~(e) Four nonvoting liaison advisers who serve in an advisory,~~
21 ~~nonvoting capacity shall consist of all of the following:~~

22 ~~(1) One representative of the United States Fish and Wildlife~~
23 ~~Service, designated by the United States Secretary of the Interior.~~

24 ~~(2) One representative of the United States National Marine~~
25 ~~Fisheries Service, designated by the United States Secretary of the~~
26 ~~Interior.~~

27 ~~(3) One representative of the United States Bureau of~~
28 ~~Reclamation, designated by the United States Secretary of the~~
29 ~~Interior.~~

30 ~~(4) One representative of the United States Army Corps of~~
31 ~~Engineers, designated by the Commanding Officer, United States~~
32 ~~Army Corps of Engineers, South Pacific Division.~~

33 ~~(d) The public member appointed by the Governor shall serve~~
34 ~~at his or her pleasure.~~

35 ~~(e) The locally appointed members and alternates shall serve at~~
36 ~~the pleasure of the appointing board of supervisors.~~

37 ~~(f) The public members appointed by the Senate Committee on~~
38 ~~Rules and the Speaker of the Assembly shall serve for a term of~~
39 ~~four years, with a two-term limit.~~

1 ~~(g) The Members of the Senate and Assembly shall serve for a~~
2 ~~term of four years, with a two-term limit.~~

3 ~~(h) Alternates may be appointed by the county boards of~~
4 ~~supervisors.~~

5 ~~32332. Annually, the voting members of the board shall elect~~
6 ~~from among the voting members a chairperson and vice~~
7 ~~chairperson, and other officers as necessary. If the office of the~~
8 ~~chairperson or vice chairperson becomes vacant, a new chairperson~~
9 ~~or vice chairperson shall be elected by the voting members of the~~
10 ~~board to serve for the remainder of the term. The chairperson shall~~
11 ~~be selected from among the members specified in paragraphs (4)~~
12 ~~to (8), inclusive, of subdivision (a) of Section 32330.~~

13 ~~32334. A majority of the voting members shall constitute a~~
14 ~~quorum for the transaction of the business of the conservancy. The~~
15 ~~board shall not transact the business of the conservancy if a quorum~~
16 ~~is not present at the time a vote is taken. A decision of the board~~
17 ~~requires an affirmative vote of six of the voting members, and the~~
18 ~~vote is binding with respect to all matters acted on by the~~
19 ~~conservancy.~~

20 ~~32336. The board shall adopt rules and procedures for the~~
21 ~~conduct of business by the conservancy.~~

22 ~~32338. The board may establish advisory boards or committees,~~
23 ~~hold community meetings, and engage in public outreach.~~

24 ~~32340. The board shall establish and maintain a headquarters~~
25 ~~office within the Delta. The conservancy may rent or own real and~~
26 ~~personal property and equipment pursuant to applicable statutes~~
27 ~~and regulations.~~

28 ~~32342. The board shall determine the qualifications of, and~~
29 ~~shall appoint, an executive officer of the conservancy, who shall~~
30 ~~be exempt from civil service. The board shall employ other staff~~
31 ~~as necessary to execute the powers and functions provided for in~~
32 ~~this division.~~

33 ~~32344. The board may enter into contracts with private entities~~
34 ~~and public agencies to procure consulting and other services~~
35 ~~necessary to achieve the purposes of this division.~~

36 ~~32346. The conservancy's expenses for support and~~
37 ~~administration may be paid from the conservancy's operating~~
38 ~~budget and any other funding sources available to the conservancy.~~

39 ~~32348. The board shall conduct business in accordance with~~
40 ~~the Bagley-Keene Open Meeting Act (Article 9 (commencing with~~

1 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
2 the Government Code):

3 ~~32350. The board shall hold its regular meetings within the~~
4 ~~Delta or the City of Rio Vista.~~

5
6 CHAPTER 5. POWERS, DUTIES, AND LIMITATIONS
7

8 ~~32360. (a) Except as specified in Section 32360.5, the~~
9 ~~jurisdiction and activities of the conservancy are limited to the~~
10 ~~Delta and Suisun Marsh.~~

11 ~~(b) The Sacramento-San Joaquin Delta Conservancy Fund is~~
12 ~~hereby created in the State Treasury. Money in the fund shall be~~
13 ~~available, upon appropriation by the Legislature, only for the~~
14 ~~purposes of this division.~~

15 ~~(1) Funds provided for ecosystem restoration and enhancement~~
16 ~~shall be available for projects consistent with the conservancy's~~
17 ~~strategic plan adopted pursuant to Section 32376.~~

18 ~~(2) Funds provided for regional sustainability shall be available~~
19 ~~for projects consistent with the Delta Protection Commission's~~
20 ~~Regional Sustainability and Land Use Plan.~~

21 ~~32360.5. In furtherance of the conservancy's role in~~
22 ~~implementing the Delta Plan, the conservancy may take or fund~~
23 ~~an action outside the Delta and Suisun Marsh if the board makes~~
24 ~~all of the following findings:~~

25 ~~(a) The project implements the ecosystem goals of the Delta~~
26 ~~Plan.~~

27 ~~(b) The project is consistent with the requirements of any~~
28 ~~applicable state and federal permits.~~

29 ~~(c) The conservancy has given notice to and receives and~~
30 ~~reviews any comments from affected local jurisdictions and the~~
31 ~~Delta Protection Commission.~~

32 ~~(d) The conservancy has given notice to and reviewed any~~
33 ~~comments received from any state conservancy where the project~~
34 ~~is located.~~

35 ~~(e) The project will provide significant benefits to the Delta.~~

36 ~~32362. The conservancy may engage in partnerships with~~
37 ~~nonprofit organizations, local public agencies, and landowners.~~

38 ~~32363. In carrying out this division, the conservancy shall~~
39 ~~cooperate with and consult with the city or county where a grant~~
40 ~~is proposed or an interest in real property is proposed to be~~

1 acquired, and shall, as necessary or appropriate, coordinate its
2 efforts with other state agencies, in cooperation with the Secretary
3 of Natural Resources. The conservancy shall, as necessary or
4 appropriate, cooperate and consult with a public water system,
5 levee, flood control, or drainage agency that owns or operates
6 facilities, including lands appurtenant thereto, where a grant is
7 proposed or an interest in land is proposed to be acquired.

8 32364. (a) The conservancy may provide grants and loans to
9 state agencies, local public agencies, nonprofit organizations, and
10 tribal organizations to further the goals of the conservancy.

11 (b) An entity applying for a grant from the conservancy to
12 acquire an interest in real property shall specify all of the following
13 in the grant application:

14 (1) The intended use of the property.

15 (2) The manner in which the land will be managed.

16 (3) How the cost of ongoing operations, maintenance, and
17 management will be provided, including an analysis of the
18 maintaining entity's financial capacity to support those ongoing
19 costs.

20 (4) Grantees shall demonstrate, where applicable, how they will
21 provide payments in lieu of taxes, assessments, or charges
22 otherwise due to elements of local government.

23 32366. The conservancy may acquire from willing sellers or
24 transferors interests in real property and improve, lease, or transfer
25 interests in real property, in order to carry out the purposes of this
26 division. However, the conservancy shall not acquire a fee interest
27 in real property.

28 32368. The conservancy may enter into an agreement with a
29 public agency, nonprofit organization, or private entity for the
30 construction, management, or maintenance of facilities authorized
31 by the conservancy.

32 32370. The conservancy shall not exercise the power of eminent
33 domain.

34 32372. (a) The conservancy may pursue and accept funds from
35 various sources, including, but not limited to, federal, state, and
36 local funds or grants, private philanthropy, gifts, donations,
37 bequests, devises, subventions, grants, rents, royalties, or other
38 assistance and funds from public and private sources.

39 (b) The conservancy may accept fees levied by others.

40 (c) The conservancy may create and manage endowments.

1 ~~(d) All funds received by the conservancy shall be deposited in~~
2 ~~the fund for expenditure for the purposes of this division.~~

3 ~~32376. Within two years of hiring an executive director, the~~
4 ~~board shall create and adopt a strategic plan to achieve the goals~~
5 ~~of the conservancy. The plan shall describe its interaction with~~
6 ~~local, regional, state, and federal land use, recreation, water and~~
7 ~~flood management, and habitat conservation and protection efforts~~
8 ~~within and adjacent to the Delta. The plan shall establish priorities~~
9 ~~and criteria for projects and programs, based upon an assessment~~
10 ~~of program requirements, institutional capabilities, and funding~~
11 ~~needs throughout the Delta. The plan shall be consistent with the~~
12 ~~Delta Plan, the Delta Protection Commission's Regional~~
13 ~~Sustainability and Land Use Plan, the Central Valley Flood~~
14 ~~Protection Plan, the Suisun Marsh Preservation Act, and the Habitat~~
15 ~~Management, Preservation and Restoration Plan for the Suisun~~
16 ~~Marsh.~~

17 ~~32378. (a) The conservancy may expend funds and award~~
18 ~~grants and loans to facilitate collaborative planning efforts and to~~
19 ~~develop projects and programs that are designed to further the~~
20 ~~purposes of this division.~~

21 ~~(b) The conservancy may provide and make available technical~~
22 ~~information, expertise, and other nonfinancial assistance to public~~
23 ~~agencies, nonprofit organizations, and tribal organizations, to~~
24 ~~support program and project development and implementation.~~

25 ~~32380. The conservancy may acquire water or water rights to~~
26 ~~support the goals of the conservancy.~~

27 ~~32381. This division does not grant to the conservancy any of~~
28 ~~the following:~~

29 ~~(a) The power of a city or county to regulate land use.~~

30 ~~(b) The power to regulate any activities on land, except as the~~
31 ~~owner of an interest in the land, or pursuant to an agreement with,~~
32 ~~or a license or grant of management authority from, the owner of~~
33 ~~an interest in the land.~~

34 ~~(c) The power over water rights held by others.~~